Google, Inc. v. Affinity Engines, Inc. Doc. 33

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| GOOGLE INC., a Delaware corporation,<br><br>Plaintiff,<br><br>v.<br><br>AFFINITY ENGINES, INC., a Delaware corporation,<br><br>Defendant. | Case No. C 05-0598 JW (HRL)<br><br>**AFFINITY ENGINES, INC.'S OBJECTIONS TO GOOGLE INC.'S LETTER REQUEST FOR CONSIDERATION OF SURREPLY**<br><br>Date: May 9, 2005<br>Time: 9:00 a.m.<br>Judge: Honorable James Ware |

The Plaintiff's letter requesting that the Court consider a surreply regarding Affinity Engines, Inc.'s Motion to Dismiss and/or Stay Proceedings, previously scheduled for hearing on May 9, 2005, is procedurally improper and should be denied.

Specifically, Google violated the local rules when filing its letter request for a surreply. Civil L.R. 7-3(d) provides that "once a reply is filed, no additional memoranda, papers or letters shall be filed **without prior Court approval.**" (emphasis added). Instead of properly attempting to seek court approval for the filing of an additional brief, Google belatedly purported to attempt to file a surreply along with its letter to the Court.

Google's only mechanism for requesting court approval to file additional papers is to move for administrative relief, as provided in Civil L.R. 7-11. Google failed to properly move the Court to consider its surreply. Accordingly, its letter request should be denied.

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The Court, by taking the motion off of calendar, has indicated to the parties that it already possessed all necessary information to properly adjudicate this matter. Given that AEI filed its reply brief on April 25, 2005, Google had over a week to properly move for permission to file a surreply before receiving notice that the scheduled hearing was taken off calendar. Google is not only attempting to improperly get the last word – in violation of the local rules – but is wasting the Court's resources, and AEI's resources, by executing this last-minute maneuver. For all of these reasons, AEI respectfully submits that Google's surreply should not be considered by the Court.

Respectfully submitted,

Dated: May 5, 2005

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ G. Hopkins Guy, III /s/

G. Hopkins Guy, III
Attorneys for Defendant Affinity Engines, Inc.